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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DAVID COTTRELL,

Plaintiff,

v.

AT&T INC., PACIFIC BELL TELEPHONE CO.
D/B/A AT&T CALIFORNIA, DIRECTV, LLC,
AT&T SERVICES, INC., AND AT&T
MOBILITY SERVICES, LLC,

Defendants.

No. 3:19-cv-07672-JCS

**STIPULATION AND ~~[PROPOSED]~~
ORDER STAYING CASE**

Plaintiff David Cottrell and Defendants AT&T Inc., Pacific Bell Tel. Co., DIRECTV, LLC, AT&T Services, Inc., and AT&T Mobility Services, LLC stipulate and respectfully request that the Court stay the case pending the Ninth Circuit's mandate.

1. In June 2020, Defendants filed a notice of appeal from the Court's denial of their motion to compel arbitration.

2. On July 16, 2021, following the oral argument of the parties' appeal, the Ninth Circuit panel hearing the appeal issued an order vacating the parties' submissions and holding the appellate proceedings in abeyance, pending the Ninth Circuit's disposition of *Hodges v. Comcast Cable Communications*, No. 19-16483, another appeal dealing with what constitutes "public injunctive relief" under California's *McGill* rule. (Ninth Circuit Dkt. No. 39.) The panel's July 16 order also

1 instructed the parties “each [to] file a supplemental brief of up to 10 pages discussing the implications
2 of the [*Hodges*] disposition, if any, on this case.” (*Id.*)

3 3. On September 10, 2021, the Ninth Circuit issued its opinion in *Hodges*, which means
4 the parties must submit supplemental briefing by October 1, 2021.

5 4. Plaintiff received the last of Defendants’ productions of documents earlier this month.
6 Before *Hodges* was issued, the parties were about to submit a joint stipulation and proposed order
7 amending the most recent case management order. The parties’ proposed amended schedule
8 effectively contemplated that intensive document review would begin now and likely be completed
9 by the end of the month, and that depositions would likely begin in October.

10 5. While the parties very likely disagree about how *Hodges* applies to this case, it is clear
11 to both sides that it may be wasteful to proceed into arguably the most expensive and labor-intensive
12 part of discovery without first hearing from the Ninth Circuit.

13 6. Accordingly, the Plaintiff and Defendants request that this case be stayed pending the
14 mandate of the Ninth Circuit in Defendants’ appeal from the order denying their motion to compel
15 arbitration.

16 7. Within 14 days of that mandate, the parties will submit a joint status report giving their
17 views on how this Court should proceed, and, if appropriate, requesting a modification of the most
18 recent case management order.

19 DATED this 14th day of September, 2021.

20 **KELLER ROHRBACK L.L.P.**

21 By: *s/ Benjamin Gould*

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SIGNATURE ATTESTATION

Pursuant to Local Rule 5-1(i)(3), I hereby attest and certify that concurrence in the filing of this document has been obtained from the other Signatories hereto.

By: /s/Benjamin Gould
Benjamin Gould

CERTIFICATE OF SERVICE

I, Benjamin Gould, hereby certify that on September 14, 2021, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

By: /s/ Benjamin Gould
Benjamin Gould

[PROPOSED] ORDER STAYING CASE

Based on the foregoing Stipulation To Stay Case Pending Appeal, this Court stays all aspects of this action pending the mandate of the Ninth Circuit in the appeal from the Court's order denying Defendants' motion to compel arbitration; vacates those portions of its May 24, 2021 civil minute order (Dkt. No. 89) that order a joint case management conference statement due **February 4, 2022** and set a case management conference for **February 11, 2022¹ at 9:30 am by Zoom Webinar**; and orders the parties to file a joint status report within 14 days of the Ninth Circuit's issuance of its mandate.

IT IS SO ORDERED AS MODIFIED.

Dated: September 14, 2021.

By: 

The Hon. Joseph C. Spero
United States Chief Magistrate Judge

¹ See ECF #92, dated June 7, 2021 that continued the further case management conference to February 11, 2022.